IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
February 13, 2008 Session

PATRICIA B. STEWART v. CHALET VILLAGE PROPERTIES, INC., ET AL.

Appeal from the Circuit Court for Sevier County
No. 2006-0137-I Ben W. Hooper, II, Judge

No. E2007-01499-COA-R3-CV - FILED MARCH 31, 2008

The issue presented in this case involves the validity of an exculpatory clause contained in a short-term lease of a vacation rental house. The plaintiff was injured when she fell on an allegedly dangerous and negligently maintained walkway at a vacation rental house in Gatlinburg, Tennessee. The trial court granted the rental agency summary judgment on the sole ground of the exculpatory clause in the rental agreement that provided the plaintiff would not hold the rental agency responsible "for any injuries or damages resulting from accidents occurring at the property." Applying the analysis adopted by the Tennessee Supreme Court in ***Olson v. Molzen***, 558 S.W.2d 429 (Tenn. 1977), and further discussed in ***Crawford v. Buckner***, 839 S.W.2d 754 (Tenn. 1992), we conclude that the exculpatory clause is invalid as against public policy and consequently vacate the trial court's summary judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Vacated; Case Remanded

SHARON G. LEE, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

Eugene B. Dixon, Maryville, Tennessee, for the Appellant, Patricia B. Stewart.

Thomas L. Kilday and Jonathan E. Roberts, Greeneville, Tennessee, and Joshua M. Ball, Knoxville, Tennessee, for the Appellee, Chalet Village Properties, Inc.

OPINION

I. Background

Patricia B. Stewart, a resident of the state of Georgia, rented a vacation house in Gatlinburg for a three-day weekend in March of 2005. Ms. Stewart signed a rental agreement with Chalet Village Properties, Inc. ("Chalet Village"), the rental agent for the property, which contained an exculpatory clause providing the following:

> I will not hold Chalet Village Properties, Inc. responsible for any injuries or damages resulting from accidents occurring at the property or for loss of money, jewelry, valuables, or personal property of any kind.

On her first day at the rental house, Ms. Stewart tripped on the asphalt walkway leading to the entrance of the house, fell, and was injured.

Thereafter, Ms. Stewart filed this lawsuit against Chalet Village and Allum Limited Partnership No. 1 ("Allum"), the owner of the rental property, alleging that the walkway was dangerous and defective because of the defendants' negligence in failing to properly maintain it. Chalet Village answered, denying negligence and liability and invoking the exculpatory clause of the rental agreement, and also filed a cross-claim against Allum, alleging that "if it is proven that the premises at issue was unreasonably [un]safe, which is denied, then [Allum] would be liable to the Plaintiff for any injuries or damages as owner of the premises."

Chalet Village filed a motion for summary judgment, arguing that under the exculpatory provision of the rental agreement, it was entitled to judgment as a matter of law. Ms. Stewart argued in response that pursuant to the Supreme Court's analysis in ***Crawford v. Buckner***, 839 S.W.2d 754 (Tenn. 1992), the trial court should hold the exculpatory clause of the short-term residential lease invalid because it affects the public interest and thus is contrary to public policy. After a hearing, the trial court ruled the exculpatory clause enforceable and granted Chalet Village summary judgment. The trial court designated its order granting summary judgment to Chalet Village to be a final judgment pursuant to Tenn. R. Civ. P. 54.02.

II. Issue Presented

Ms. Stewart appeals, raising the sole issue of whether the trial court erred in upholding the validity of the exculpatory clause contained in the short-term residential rental agreement and in granting summary judgment to Chalet Village.

III. Analysis

A. Standard of Review

Summary judgments are proper in virtually any civil case that can be resolved on the basis of legal issues alone. ***Fruge v. Doe,*** 952 S.W.2d 408, 410 (Tenn. 1997); ***Byrd v. Hall***, 847 S.W.2d 208, 210 (Tenn. 1993); ***Pendleton v. Mills,*** 73 S.W.3d 115, 121 (Tenn. Ct. App. 2001). They are not, however, appropriate when genuine disputes regarding material facts exist. Tenn. R. Civ. P. 56.04. Thus, a summary judgment should be granted when the undisputed facts, as well as the inferences reasonably drawn from the undisputed facts, support only one conclusion – that the party seeking the summary judgment is entitled to a judgment as a matter of law. ***Pero's Steak & Spaghetti House v. Lee,*** 90 S.W.3d 614, 620 (Tenn. 2002); ***Webber v. State Farm Mut. Auto. Ins. Co.***, 49 S.W.3d 265, 269 (Tenn. 2001).

The party seeking summary judgment bears the burden of demonstrating that no genuine dispute of material fact exists and that it is entitled to a judgment as a matter of law. ***Godfrey v. Ruiz,*** 90 S.W.3d 692, 695 (Tenn. 2002); ***Shadrick v. Coker,*** 963 S.W.2d 726, 731 (Tenn. 1998). When the moving party is the defendant, it is entitled to a judgment as a matter of law only when it affirmatively negates an essential element of the non-moving party's claim or establishes an affirmative defense that conclusively defeats the non-moving party's claim. ***Byrd,*** 847 S.W.2d at 215 n. 5; ***Cherry v. Williams,*** 36 S.W.3d 78, 82-83 (Tenn. Ct. App. 2000).

In this case, we review a question of law; as pertaining to the issue presented, the validity of the exculpatory clause, there are no disputed questions of material fact. Therefore, the summary judgment granted by the trial court enjoys no presumption of correctness on appeal. ***BellSouth Adver. & Publ'g Co. v. Johnson,*** 100 S.W.3d 202, 205 (Tenn. 2003); ***Scott v. Ashland Healthcare Ctr., Inc.,*** 49 S.W.3d 281, 285 (Tenn. 2001). Accordingly, we must make a fresh determination that the requirements of Tenn. R. Civ. P. 56.01 *et seq*. have been satisfied. ***Hunter v. Brown,*** 955 S.W.2d 49, 50-51 (Tenn. 1997). We must consider the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in the non-moving party's favor. ***Godfrey,*** 90 S.W.3d at 695; ***Doe v. HCA Health Servs. of Tenn., Inc.,*** 46 S.W.3d 191, 196 (Tenn. 2001).

B. Validity of Exculpatory Clause in Short-Term Residential Rental Agreement

Some initial discussion is warranted in this case about the status of the proof presented at this stage of the proceedings, the relationships among the parties, and the precise nature of the question presented. As already noted, Ms. Stewart sued both the rental agent (Chalet Village) and the owner (Allum) of the vacation rental house. Allum and Chalet Village have each taken the position in the pleadings and arguments that the other is responsible for maintenance of the rental property. Neither Allum nor Chalet Village has presented evidence in this record regarding who is responsible for maintenance and/or management of the property, and the trial court did not make a finding on this issue in its order.

Thus, at this point, it is possible that Chalet Village had assumed and undertaken the duty to manage and maintain the rental house premises, as Allum appears to assert, though this has not been established by the proof presented. For purposes of the analysis of the validity of the exculpatory clause, it suffices to say that Chalet Village is therefore a potentially liable party for such negligence as may be shown that resulted in Ms. Stewart's injury. The questions regarding the nature and scope of Chalet Village's and Allum's duty have not yet been addressed by the trial court and so are not at issue on appeal, and we make no pronouncements on those questions in this opinion. The rental agreement was between Ms. Stewart and Chalet Village, and only Chalet Village is relying upon the exculpatory clause to relieve it of any potential liability for negligence. The validity of the exculpatory clause is an important threshold question because assuming (without deciding) that Chalet Village undertook the duty of maintaining the rental house premises, any liability resulting from the breach of that duty would be negated by the exculpatory clause if that clause were held valid and enforceable. We do not so hold, however, because as discussed further below, we are of the opinion that the exculpatory clause is invalid as contrary to public policy under the analysis prescribed by the Supreme Court in the ***Olson*** and ***Crawford*** cases.

In ***Crawford***, the Court applied the rule adopted in ***Olson v. Molzen***, 558 S.W.2d 429 (Tenn. 1977) that "if an exculpatory provision affects the public interest, it is void as against public policy, despite the general rule that parties may contract that one shall not be liable for his negligence to another" in the context of residential lease agreements. ***Crawford v. Buckner***, 839 S.W.2d 754, 757 (Tenn. 1992). The Court applied the following criteria to determine whether an exculpatory clause affects the public interest:

> (1) It concerns a business of a type generally thought suitable for public regulation.
>
> (2) The party seeking exculpation is engaged in performing a service of great importance to the public, which is often a matter of practical necessity for some members of the public.
>
> (3) The party holds himself out as willing to perform this service for any member of the public who seeks it, or at least for any member coming within certain established standards.
>
> (4) As a result of the essential nature of the service, in the economic setting of the transaction, the party invoking exculpation possesses a decisive advantage of bargaining strength against any member of the public who seeks his services.
>
> (5) In exercising a superior bargaining power the party confronts the public with a standardized adhesion contract of exculpation, and makes no provision whereby a purchaser may pay additional reasonable fees and obtain protection against negligence.

> (6) Finally, as a result of the transaction, the person or property of the purchaser is placed under the control of the seller, subject to the risk of carelessness by the seller or his agents.

Crawford, 839 S.W.2d at 757 (numbering added). The ***Crawford*** Court reiterated that it is not necessary that all of the above factors be present in any given transaction, but "generally a transaction that has some of these characteristics would be offensive." ***Id.*** The Supreme Court in ***Crawford*** applied these factors in holding that an exculpatory clause in a residential lease barring recovery against a landlord for negligence that causes the tenant injury was invalid as against public policy. ***Id.*** at 760.

Since the ***Crawford*** decision, Tennessee courts have applied its criteria to invalidate an exculpatory clause on several occasions. *See* ***Carey v. Merritt***, 148 S.W.3d 912 (Tenn. Ct. App. 2003) (exculpatory clause in home inspection contract invalid where three of six criteria present); ***Russell v. Bray***, 116 S.W.3d 1 (Tenn. Ct. App. 2003) (exculpatory clause in home inspection contract invalid where four of six criteria present); ***Lomax v. Headley Homes***, No. 02A01-9607-CH-00163, 1997 WL 269432 (Tenn. Ct. App. W.S., filed May 22, 1997) (exculpatory clause in construction loan agreement invalid); ***Smith v. The Peoples Bank of Elk Valley***, No. 01A01-9111-CV-00421, 1992 WL 117061 (Tenn. Ct. App. W.S., filed June 3, 1992) (exculpatory clause in safe deposit box rental agreement invalid). Conversely, our courts have upheld exculpatory clauses in agreements relating to sporting or recreational events bearing some inherent risk, *see* ***Henderson v. Quest Expeditions, Inc.***, 174 S.W.3d 730 (Tenn. Ct. App. 2005) (whitewater rafting); ***Tompkins v. Helton***, No. M2002-01244-COA-R3-CV, 2003 WL 21356420 (Tenn. Ct. App. M.S., filed June 12, 2003) (plaintiff entering restricted area of racetrack), and in a case involving a commercial contract between a search provider and a law firm. ***Lane-Detman, L.L.C. v. Miller & Martin***, 82 S.W.3d 284 (Tenn. Ct. App. 2002).

We now turn to an analysis of the ***Olson-Crawford*** factors in the present case, bearing in mind that the relationship between the parties here bears many similarities to the relationship presented in the ***Crawford*** case. Both this case and ***Crawford*** involve a residential lease, and many aspects of the Supreme Court's public policy discussion in ***Crawford*** are equally applicable here. The primary differences between the agreements in this case and ***Crawford*** are the length of the residential lease and, to some extent, the purpose of the tenant in seeking residential shelter. As did the Supreme Court in ***Crawford***, we find the first criterion applicable in that the rental of vacation houses is a business of a type generally thought suitable for public regulation. *See* Tenn. Code Ann. § 62-7-101 *et seq*.; Tenn. Code Ann. § 68-14-301 *et seq*.; TENN. COMP. R. & REGS. Ch. 1200-23-4-.01 *et seq*. (1999) (requiring, among other things, that hotel "walkways, porches and hallways shall be maintained in good repair").

We also find the second criterion present in this situation: Chalet Village, the party seeking exculpation, is engaged in performing a service of great importance to the public, which is often a matter of practical necessity for some members of the public. Although Chalet Village strenuously argues to the contrary, we believe that the provision of shelter to members of the traveling public, whether such members are traveling by choice or of necessity, is a service of great importance to the public. The ***Crawford*** Court noted that shelter is "a basic necessity of life." It is no less necessary when it is provided on a temporary basis to someone who is away from his or her domicile. Further, the promotion of tourism and the attraction of vacationing visitors to this state, such as Ms. Stewart, is a matter of substantial public importance to the state of Tennessee.

The third factor is also present in this case: the party seeking exculpation holds itself out as willing to perform this service for any member of the public who seeks it, or at least for any member coming within certain established standards.

Regarding the fourth and fifth criteria, the Supreme Court stated the following in observing that a residential landlord possesses a superior bargaining position to a potential tenant:

> With respect to the fourth public interest criterion, as a result of the essential nature of the service and the economic setting of the transaction, a residential landlord has a decisive advantage in bargaining strength against any member of the public who seeks its services. A potential tenant is usually confronted with a "take it or leave it" form contract, which the tenant is powerless to alter. The tenant's only alternative is to reject the entire transaction.
>
> Moreover, due to its superior bargaining position, a residential landlord confronts the public with a standardized adhesion contract of exculpation, which contains no provision whereby a tenant can pay additional reasonable fees to obtain protection from the landlord's negligence.

Crawford, 839 S.W.2d at 758. We believe these observations are generally true in a short-term residential lease relationship as well as the longer-term relationship addressed in ***Crawford***, albeit arguably to a somewhat lesser extent in the context of a rental house or hotel room. Chalet Village argues that a potential lessee has the option of choosing other places to rent or other lessors or innkeepers to deal with if he or she is unsatisfied, which is perhaps generally (but not always) true; but that argument was also made in ***Crawford*** about longer-term residential tenants, and not found to be particularly persuasive. The Supreme Court in the seminal ***Olson*** case specifically considered and rejected the similar argument that patients had the option to freely choose other medical care providers:

> It begs the question to say she [the plaintiff] could have gone to another doctor or that she elected to undergo a surgical procedure that was not mandatory. Perhaps so. However, there is no assurance that any other doctor would not have made a similar demand [to sign an agreement with an exculpatory clause].

Olson v. Molzen, 558 S.W.2d 429, 431 (Tenn. 1977).

In the present case, Ms. Stewart filed her affidavit attesting that "[t]he lease that I signed contained no provision whereby I could pay an additional reasonable fee to obtain protection from the landlord's negligence, nor was I offered the opportunity to pay an additional reasonable fee to obtain protection from the landlord's negligence." This assertion is not disputed by Chalet Village. Although it seems likely that the rental agreement was presented on a "take it or leave it" basis and that the potential tenant was powerless to alter it, this factor is not established by the evidence in the record presented, and so our decision does not rest on that particular factor.

Regarding the sixth and final public interest criterion, the Supreme Court concluded that "by definition a residential lease places the person and the property of the tenant under the control of the landlord, subject to the risk of carelessness by the landlord and his agents." ***Crawford***, 839 S.W.2d at 758. In a short-term residential lease such as a vacation rental house, the control of the lessor/innkeeper and the potential risk to the lessee is arguably greater because the short-term lessee has far less occasion or opportunity to inspect the rental premises or to appreciate any potential dangers caused by the lessor's negligence. We find that the sixth criterion is clearly present under the circumstances presented here.

Based on the foregoing analysis, we conclude that the exculpatory clause in the rental agreement in this case affects the public interest and thus is invalid as contrary to public policy. The Restatement (Second) of Torts supports this conclusion, providing in comment *g* to section 496B as follows:

> Where the defendant is a common carrier, *an innkeeper*, a public warehouseman, a public utility, or is otherwise charged with a duty of public service, and the agreement to assume the risk relates to the defendant's performance of any part of that duty, it is well settled that it will not be given effect. Having undertaken the duty to the public, which includes the obligation of reasonable care, such defendants are not free to rid themselves of their public obligation by contract, or by any other agreement.

RESTATEMENT (SECOND) OF TORTS § 496B, comment *g* (1965) (emphasis added).

IV. Conclusion

For the aforementioned reasons, the summary judgment of the trial court in Chalet Village's favor is vacated. The exculpatory clause contained in the parties' rental agreement is invalid as contrary to public policy under the analysis prescribed in ***Crawford v. Buckner,*** 839 S.W.2d 754 (Tenn. 1992). The case is remanded for such further action as is necessary, consistent with this opinion. Costs on appeal are assessed to the Appellee, Chalet Village Properties, Inc.

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SHARON G. LEE, JUDGE